IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5500 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

RAMNIKLAL K POPAT

Versus

INDIAN OVERSEAS BANK

Appearance:

1. Special Civil Application No. 5500 of 1990

MR PV HATHI for Petitioner No. 1

MR MEHTA for MR KS NANAVATI for Respondents No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution, the petitioner, an Agricultural Officer in the respondent Bank, has challenged the order of his

dismissal as also the order dismissing his departmental appeal.

2. By a chargesheet dated 15.6.1988, the petitioner was charged with the misconducts of dishonesty and acting in a manner unbecoming of an officer of the bank. At the end of the regular departmental enquiry, it was held to have been proved that the petitioner had not discharged his duties as Agricultural Officer of the bank with utmost honesty and integrity. It was also held to have been proved that he had acted in a manner unbecoming of an officer of the bank as he had accepted illegal gratification from farmers/borrowers. The appeal preferred by the petitioner was also dismissed by the order dated 12.6.1990 while upholding the findings of the enquiring authority which was accepted by the disciplinary authority.

3. The impugned orders of the respondent are assailed on behalf of the petitioner on five grounds. Firstly, the findings of the enquiry was assailed as being perverse. After going through the findings and report of the enquiry, it was pointed out that the farmers/borrowers, who had made complaints against demand and acceptance of bribe by the petitioner, had subsequently retracted their statements and the main evidence of the complainants themselves having stood discredited, the indirect and secondary evidence of the other investigating officers could not have been relied upon to uphold the charges. It is true that most of the complaining farmers had, during their examinations before the Enquiry Officer, denied that they had paid money to the petitioner. However, there appears elaborate evidence collected by the officers of the bank and the investigator of the CBI indicating the complaints as well as their confirmation by the farmers concerned. Even while retracting the earlier complaint, one of the main witnesses, namely, Limba Vasta, stated in writing that his earlier complaint was submitted by mistake. Thus, there was sufficient evidence of the farmers having made complaints and the direct evidence of the officer in whose own presence the contents of such complaints were confirmed. In these facts and circumstances, the argument that the findings were based on no evidence or on hearsay and inconclusive evidence cannot be accepted. It is well-settled position of law, as held by the Apex Court in STATE OF HARYANA v. RATTAN SINGH [AIR 1977 SC 1512], that strict and sophisticated rules of evidence may not apply in a domestic enquiry and all materials which are logically probative for a prudent mind are permissible. Thus, there is no reason to overturn the

findings arrived at by the enquiring authority at the end of an elaborate exercise of appreciating and discussing the evidence in its entirety. The recent judgment of the Supreme Court in THE HIGH COURT OF JUDICATURE AT BOMBAY v. SHASHIKANT S. PATIL [AIR 2000 SC 22] was relied upon on behalf of the respondent to submit that, according to the settled legal position, if there is some legal evidence on which the findings could be based, then, adequacy or reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

4. The second and third grounds of challenge have to be stated only to be rejected. It was submitted that the report of the independent enquiry undertaken by the CBI was not made available to the petitioner and that the enquiry report was also not supplied before the dismissal of the petitioner. It was fairly conceded that the respondent had not relied upon the report of the CBI and the impugned order of dismissal was dated 25.9.1989 prior to the date of judgment in RAMZAN KHAN's case (AIR 1991 SC 471). As has been held by Their Lordships of the Supreme Court in STATE OF KARNATAKA v. B. HIREGOWDAR [AIR 1997 SC 9], no order of punishment passed on a delinquent employee before 20th November, 1990 is challengeable on the basis of the judgment in Ramzan Khan's case (supra) and proceedings in such cases are to be decided on the basis of the law as it existed prior to the decision in Ramzan Khan's case. The learned counsel for the respondent also relied upon the judgment of the Apex Court in UNION BANK OF INDIA v. VISHWA MOHAN [(1998) 4 SCC 310] in support of the submission that if the employee had opportunity to assail enquiry report, even at the appellate stage, and if no prejudice was shown to have been caused due to non-supply of enquiring authority's report, the order of dismissal cannot be set aside on the ground of prejudice on account of non-furnishing of the enquiry report. It is also observed in that judgment that absolute devotion, diligence, integrity and honesty need to be preserved by every employee, and particularly by bank officers, in the banking business.

4. The fourth weakly canvassed ground was that the appellate order confirming the punishment was not an elaborate one. However, it was seen that the main ground of appeal regarding sufficiency and reliability of the evidence was, albeit briefly, discussed by the appellate authority sufficiently indicating application of mind. Therefore, there is no substance in this submission also.

5. Lastly, it was submitted that the punishment of dismissal was disproportionate to the charges supposed to have been proved against the petitioner. The learned counsel vehemently urged that the petitioner was deprived of the livelihood in the early years of his career and that amounted to economic death penalty in the prime of his promising career. However, in the sensitive sector of banking business where huge amounts of public money are involved, dishonesty on the part of the officer cannot be countenanced. The punishment imposed upon the petitioner, in the facts and circumstances and in view of the seriousness of the proved misconduct, cannot be said to be shockingly disproportionate so as to require interference by this Court in exercise of the powers under Article 226 of the Constitution.

6. In the result, the petition is dismissed with no order as to costs. Rule is discharged.

Sd/-
05.10.2001 (D.H.Waghela,J.)
(KMG Thilake)